Ontario

Ontario Energy Board
Commission de l’énergie de l’Ontario

DECISION AND ORDER

EB-2015-0166 / EB-2015-0175

UNION GAS LIMITED

ENBRIDGE GAS DISTRIBUTION INC.

Applications for Pre-Approval of the Cost Consequences of Long-Term Natural Gas Transportation Contracts for Capacity on the NEXUS Pipeline

BEFORE: Cathy Spoel
Presiding Member

Christine Long
Member

Allison Duff
Member

December 17, 2015

TABLE OF CONTENTS

1 INTRODUCTION AND SUMMARY

Union Gas Limited (Union) and Enbridge Gas Distribution Inc. (Enbridge) are the two largest natural gas distribution companies in Ontario. Union serves about 1.4 million residential, commercial and industrial customers in communities across northern, southwestern and eastern Ontario. Enbridge serves over 2 million residential, commercial and industrial customers in communities across central and eastern Ontario.

Union and Enbridge each signed a precedent agreement with the developers of the NEXUS pipeline (NEXUS). Union and Enbridge intend to use the NEXUS pipeline to transport gas from the Appalachian region of the United States to the Dawn hub in southwestern Ontario.

Union and Enbridge each applied to the Ontario Energy Board (OEB) for pre-approval of the cost-consequences of 15-year transportation contracts (collectively referred to as the Contracts, or individually as the Contract) under section 36 of the *Ontario Energy Board Act, 1998* and the OEB's Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts (the Guidelines).[1] The OEB heard the two applications together.

The proposed NEXUS pipeline consists of 400 kilometres of new pipeline that would run from Kensington in eastern Ohio to Willow Run in southeastern Michigan. The NEXUS pipeline is being developed jointly by Spectra Energy Transmission, LLC (Spectra) and the DTE Pipeline Company (DTE).[2]

Union and Enbridge would both flow gas supplies on the new portion of the NEXUS path from Kensington to Willow Run, as shown on the map below, which was provided by Union and Enbridge.[3] From there, Union's supplies would flow on the existing DTE system to the St. Clair pipeline and on the St. Clair pipeline to the Dawn hub. In the

[1] EB-2008-0280, Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts, April 23, 2009. In this Decision and Order, we use the term "Guidelines" to refer to the entire April 23, 2009 document, i.e. both the cover letter and the actual form to be completed by the applicant for pre-approval.
[2] Spectra and DTE are the counterparties to Union and Enbridge on the precedent agreements each utility has signed for NEXUS capacity. The recent application for US Federal Energy Regulatory Commission approvals was submitted by NEXUS Gas Transmission, LLC, which the application states is a 50-50 joint venture owned by affiliates of Spectra Energy Partners, LP and DTE Energy Company: "Abbreviated Application for Certificates of Public Convenience and Necessity and Related Authorizations," November 20, 2015, at p. 5.
[3] EB-2015-0166 / EB-2015-0175, Exhibit K1.1 at p. 4.

case of Enbridge, gas supplies would flow on the existing DTE system to the Vector pipeline (at the Milford Junction) and on the Vector pipeline to Dawn.

Under the precedent agreements, Union and Enbridge each committed to a 15-year transportation contract, provided that certain conditions precedent are met. One of the conditions precedent is that the utilities obtain pre-approval of the cost consequences of the Contracts.

Union's precedent agreement is for 150,000 Dth/day of capacity on NEXUS for a 15-year period.[4] The annual cost of the Contract is about US$48 million, which results in a total cost over the term of the Contract of about US$715 million.[5] By contracting for

[4] EB-2015-0166 / EB-2015-0175, Union Pre-Filed Evidence, Exhibit A at p. 43.
[5] EB-2015-0166 / EB-2015-0175, Union Argument-in-Chief, November 18, 2015 at p. 6. Union's cost estimate is based on the upper end of the NEXUS toll, which reflects potential capital cost overruns related to the greenfield portion of the pipeline. The actual cost for the transportation capacity on NEXUS could be less depending on the actual costs to build the NEXUS pipeline.

150,000 Dth/day, Union received anchor shipper status, which results in a discount on the toll.[6]

Enbridge's precedent agreement is for 110,000 Dth/day of capacity on NEXUS for a 15-year period.[7] The annual cost of the Contract is about US$28 million, which results in a total cost over the term of the Contract of about US$420 million.[8] Enbridge does not have anchor shipper status. Although Enbridge's precedent agreement includes an option to increase its capacity from 110,000 Dth/day to 150,000 Dth/day, Enbridge has requested pre-approval of only the costs associated with the 110,000 Dth/day.[9]

For the reasons that follow, the OEB approves the applications for pre-approval of the cost consequences of the Contracts. The OEB finds that the NEXUS pipeline meets the eligibility criteria for pre-approval as it is new infrastructure. The OEB also finds that the Contracts result in increased gas supply diversity by securing direct transportation from the source in the Appalachian Basin. The OEB finds that Union and Enbridge have made prudent decisions on behalf of system supply customers who rely on these utilities to contract for their gas supply needs.

[6] *Ibid.* at p. 4.
[7] EB-2015-0166 / EB-2015-0175. Enbridge Pre-Filed Evidence, Exhibit A / Tab 3 / Schedule 1 at p. 17.
[8] *Ibid.* at p. 19. Enbridge's cost estimate reflects the base case for the NEXUS toll, which does not reflect any capital cost overruns related to the greenfield portion of the pipeline. The actual cost for the transportation capacity on NEXUS could be higher or lower, depending on the actual costs to build the NEXUS pipeline.
[9] EB-2015-0166 / EB-2015-0175, Oral Hearing Transcripts, Volume 2, November 16, 2015 at p. 104.

2 THE PROCESS

Union filed its application for pre-approval of the cost consequences of its Contract on May 28, 2015.[10] Enbridge filed its application on June 5, 2015.[11]

A Notice of Hearing for Union's application was issued on June 26, 2015 and a Notice of Hearing for Enbridge's application was issued on July 2, 2015.

In Procedural Order No. 1, dated July 31, 2015, the OEB combined the two proceedings. The OEB also granted intervenor status to a number of parties. A list of intervenors is set out below:

- Association of Power Producers of Ontario (APPrO)
- Building Owners and Managers Association, Greater Toronto (BOMA)
- Canadian Manufacturers and Exporters (CME)
- Consumers Council of Canada (CCC)
- Energy Probe Research Foundation (Energy Probe)
- Federation of Rental-housing Providers of Ontario (FRPO)
- Industrial Gas Users Association (IGUA)
- Just Energy Ontario L.P. (Just Energy)
- Kitchener Utilities (Kitchener)
- London Property Management Association (LPMA)
- School Energy Coalition (SEC)
- Mr. Ron Tolmie
- TransCanada Energy Ltd. (TCE)
- TransCanada PipeLines Limited (TransCanada)
- Vulnerable Energy Consumers Coalition (VECC)

Before the hearing started, an issue arose concerning the scope of the evidence to be admitted. One of the intervenors, Ron Tolmie, notified the OEB that he intended to file evidence on exergy storage and other related issues. In Procedural Order No. 2, the OEB decided that it would not accept his proposed evidence as it was outside the scope of the proceeding.

In response to a challenge filed by Mr. Tolmie, a differently constituted panel of the OEB heard a motion to review Procedural Order No. 2. The OEB dismissed Mr. Tolmie's

[10] EB-2015-0166.
[11] EB-2015-0175.

motion and upheld the decision in Procedural Order No. 2 to exclude his proposed evidence.[12]

An oral hearing on the applications for pre-approval was held on November 13, 16 and 17, and December 2, 2015.

The OEB received written submissions from the applicants, OEB staff and the intervenors, and heard oral reply argument from the applicants on December 2, 2015.

Union and Enbridge requested that the OEB issue a decision by December 21, 2015 in order to allow them to meet the terms of their precedent agreements.

[12] EB-2015-0277, Decision and Order on Motion, October 30, 2015.

3 STRUCTURE OF THE DECISION

Chapter 4 sets out the OEB's findings regarding how long-term transportation contracts are to be evaluated under the Guidelines. Chapter 5 then applies that evaluation framework to the proposed NEXUS contracts. Chapter 6 addresses cost awards.

4 THE ISSUES – THE TEST FOR PRE-APPROVAL

The Guidelines[13] establish a two-part test for obtaining pre-approval. The first part of the test determines whether the type of contract is eligible for pre-approval. If the contract is eligible, the second part of the test determines whether pre-approval should be granted. The Guidelines do not provide specific criteria for the second part of the test, yet indicate the evidence to be filed in support of the application, including the needs, costs, benefits, diversity and risks associated with the contract. The OEB's assessment of both parts of the test determines whether pre-approval is granted.

OEB approval is not required for the utilities to proceed with the Contracts. The utilities may proceed without pre-approval. However, without pre-approval, the utilities' shareholders will bear the risk of recovering the cost consequences of the Contracts in the future.

OEB pre-approval guarantees that Union and Enbridge will be allowed to collect from their customers the NEXUS costs over the 15-year term of the Contracts (approximately US$715 million in Union's case and US$420 million in Enbridge's case). With pre-approval, an OEB decision is issued before the Contracts take effect. In this way, OEB decisions are not deferred to the future and the utilities have certainty with respect to long-term contracting.

4.1 Part 1 of the Test: Are the Contracts Eligible for Pre-Approval?

Parties had different views on what types of contracts are eligible under the Guidelines. OEB staff and several intervenors argued that only contracts that would bring new sources of gas supply to the Ontario market should qualify. Union and Enbridge maintained that the source of gas supply was not crucial to the pre-approval analysis, provided that the contracts support new infrastructure.

Pre-approval of the cost consequences of a utility's gas transportation or commodity contracts is a departure from the OEB's normal approach. Usually such costs are reviewed through the regular rate-setting process.

The Guidelines arose from the recognition that utilities might not be willing to enter the long-term commitments that are sometimes demanded by the developers of new pipelines or other gas infrastructure unless they were assured in advance that the OEB would not disallow the costs associated with such commitments. Without pre-approval,

[13] *Supra,* footnote 1.

needed infrastructure might not be built. As the OEB explained in its January 27, 2011 decision in EB-2010-0300 / EB-2010-0333, a case where it had to determine an application under the Guidelines, the adoption of the pre-approval process "was recognition by the Board that as a matter of commercial reality the developers of natural gas infrastructure must in some circumstances require long-term commitments to support large infrastructure investments."[14] To facilitate the development of such infrastructure, "it was reasonable to make provision for an extraordinary process wherein the costs consequences of such long term arrangements could be pre-approved".[15]

In the OEB's 2005 report on the Natural Gas Forum (a broad OEB-led regulatory review of the gas sector), the OEB accepted that pre-approval may be appropriate for some long-term contracts, and undertook to consult on the development of pre-approval guidelines:

> The Board believes that there is a role for utilities in long-term upstream transportation contracting, but the Board is not in favour of new long-term utility supply contracts at this time. However, the Board will offer utilities the opportunity to apply for pre-approval of long-term supply and/or transportation contracts. Further, the Board will consult on the development of guidelines that will inform all stakeholders of the principles and issues the Board will consider when evaluating an application for contract pre-approval.[16]

In 2008, the OEB initiated stakeholder consultations on the development of a pre-approval process for long-term gas supply and transportation contracts. This consultation resulted in the OEB-issued "Draft Filing Guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts" (the Draft Guidelines).[17] The OEB indicated that during the consultative process, "no substantive issues were raised and stakeholders generally agreed to a pre-approval process for long-term contracts that support the development of new natural gas infrastructure (e.g., new pipeline facilities to access new natural gas supply sources such as Liquefied Natural Gas plants and frontier production)."[18] The OEB also issued a report attached to the Draft Guidelines which indicated:

[14] EB-2010-0300 / EB-2010-0333, Decision and Order, January 27, 2011 at p. 7.
[15] *Ibid.* at p. 7.
[16] Ontario Energy Board, Natural Gas Regulation in Ontario: A Renewed Policy Framework, March 30, 2005 at pp. 5-6.
[17] EB-2008-0280, Draft Filing Guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts, February 11, 2009.
[18] *Ibid.* at p. 2.

> The Board believes that these applications should be limited to those that support the development of new natural gas infrastructure (e.g., new transportation facilities to access new natural gas supply sources). The Board does not believe that the pre-approval process for long-term contracts should be used for the utility's normal day-to-day contracting, renewals of existing contracts and other long-term contracts. These contracts should continue to be addressed in the utility's rate application.[19]

After considering stakeholder comments on the Draft Guidelines, the OEB issued the final Guidelines on April 23, 2009.

Findings

The OEB finds the Guidelines apply to new pipeline infrastructure and are not limited to new pipeline infrastructure from a new gas supply source. The Guidelines state:

> This form applies to all applicants who are requesting pre-approval of long-term natural gas supply and/or upstream transportation contracts that support the development of new natural gas infrastructure.[20]

Although the Guidelines indicate that the source of gas may be a relevant factor, the source of gas is not the determinative factor. Under the heading "Needs, Costs and Benefits", the Guidelines require an applicant to describe the proposed project including the "benefits (such as this project improves the security of supply and the diversity of supply sources)".[21] The OEB finds the meaning of the words "such as" to be clear. The words merely precede an illustrative example of a benefit that might weigh in favour of pre-approval. They do not expand upon the pre-requisite for pre-approval.

The OEB elaborated on the eligibility requirements for pre-approval in the final Guidelines:

> The Board believes that applications for pre-approval of the cost consequences of long-term contracts should be limited to those that support the development of <u>new</u> natural gas infrastructure. The Board does not believe that the pre-approval process should be used for the natural gas utility's ("utility") normal day-to-day contracting, renewals of existing contracts and other long-term contracts that are not related to new natural gas infrastructure. These contracts should continue to be addressed in the utility's rate proceedings.[22]

[19] EB-2008-0280, Report of the Board: Draft Filing Guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts (Attachment B to the Draft Guidelines), at p. 4.
[20] Guidelines at p. 4.
[21] *Ibid.* at p. 4 (part 2.1).
[22] *Ibid.* at p. 2 (emphasis in original).

In the final Guidelines, the OEB repeated its observation that “stakeholders generally agreed to a pre-approval process for long-term contracts that support the development of new natural gas infrastructure (e.g., new pipeline facilities to access new natural gas supply sources such as Liquefied Natural Gas plants and frontier production.)”[23] While some parties argued that this means the Guidelines only apply to new infrastructure if it is used to access these new sources of supply, the OEB finds this interpretation too narrow. These are given as examples and cannot be interpreted as restricting the pre-approval process only to pipelines that access new natural gas supply sources. This is an illustrative, rather than an exhaustive, list of the types of projects that may be eligible for cost pre-approval. The OEB finds that the key factor is whether the infrastructure is new, not whether the source of gas supply is new.

The OEB acknowledges that the panel in EB-2010-0300 / EB-2010-0333 went further than this, remarking that “the purpose of the pre-approval process is to support the development of new transportation facilities <u>to access new natural gas supply sources.</u>”[24] The panel in that case explained that “there must be a compelling case that without the reallocation of risk to the ratepayer from the shareholder arising from pre-approval, new natural gas transportation infrastructure would not be constructed and new natural gas supplies would remain beyond the reach of the market.”[25]

The source of supply was not the decisive factor in EB-2010-0300 / EB-2010-0333. The panel had already determined that the contracts were ineligible for pre-approval because they did not support the development of new gas infrastructure.[26] To the extent the decision suggests that pre-approval is only available for contracts for new sources of gas, this panel finds it unpersuasive. Nor do these comments build upon or change the original objectives of the Guidelines. The Guidelines remain the source document for the OEB and this Decision. The OEB finds that one objective of the Guidelines is to facilitate the construction of new gas infrastructure.

In summary, the OEB finds that a long-term gas supply or transportation contract will be eligible for pre-approval if it supports the development of new natural gas infrastructure. Although “long-term” is not defined in the Guidelines, it was not disputed in this proceeding that the 15-year term of the proposed NEXUS Contracts would qualify. There is no precondition that the contract relate to gas from a new source of supply. However, the proposed contract’s effect on supply diversity is a relevant factor to

---

[23] *Ibid.* at p. 2.
[24] EB-2010-0300 / EB-2015-0333, Decision and Order, January 27, 2011 at pp. 9-10 (emphasis added).
[25] *Ibid.* at p. 10.
[26] *Ibid.* at p. 9.

consider at the second stage of the test, that is, the evaluation of a contract on its merits.

4.2 Part 2 of the Test: Should the Cost Consequences of the Contracts be Pre-approved?

The Guidelines set out the information and analysis that must be included in an application for pre-approval of a long-term contract, and provide a framework for assessing whether the contract and its associated costs consequences are reasonable.

The Guidelines include the following key factors for OEB consideration:

1. Need, Costs and Benefits of the project
2. Contract Diversity
3. Risk Assessment
4. Other Considerations
    a. Affiliate Relationships
    b. Retail Competition Impacts

5 EVALUATING THE PROPOSED NEXUS CONTRACTS UNDER THE GUIDELINES

5.1 Are the Contracts Eligible for Pre-Approval?

OEB staff and several intervenors argued that the NEXUS Contracts are not eligible for pre-approval under the Guidelines because the Contracts are not needed to bring new sources of natural gas to the Ontario market. These parties argued that Union and Enbridge already receive supply from the Appalachian region via pathways other than NEXUS. Some also argued that, even without pre-approval of the NEXUS costs, NEXUS and/or other new transportation infrastructure, such as the proposed Rover pipeline, are likely to be built to deliver Appalachian gas to the Ontario market.

Other parties supported Union and Enbridge. These parties argued that the NEXUS Contracts are eligible for pre-approval as they support the development of new infrastructure that will bring economic gas supplies to Ontario for the benefit of Union's and Enbridge's ratepayers.

Findings

The OEB finds that the Contracts are eligible for pre-approval. The Contracts clearly support the development of new natural gas infrastructure, namely the 400 kilometres of brand new pipeline from Kensington to Willow Run.

Both Union and Enbridge indicated that without pre-approval the utilities would not proceed with the Contracts.[27] The utilities would not commit to 15-year contracts as the cost consequences would be subject to subsequent prudence reviews and approvals by the OEB. Although the utilities considered the Contracts prudent, the utilities were not willing to assume the risk that the costs would not be approved in the future. The utilities submitted that the cost of gas supply is a pass-through expense and the utilities are not compensated for taking any associated gas supply risks. The Guidelines were established to address this issue.

The utilities are entrusted to make prudent decisions on behalf of system gas users and participate in competitive markets to do so. Yet the utilities' compensation structure may inhibit or dissuade the commitment to otherwise prudent contracts. In this case, the OEB finds that consideration of pre-approval of the cost consequences is justified.

---

[27] EB-2015-0166 / EB-2015-0175, Union Argument-in-Chief, November 18, 2015 at p. 2; and EB-2015-0166 / EB-2015-0175, Enbridge Argument-in-Chief, November 18, 2015 at p. 15.

Although the evidence was not conclusive, there is reason to doubt that the NEXUS pipeline would be built without the long-term transportation contracts, which include those of Union and Enbridge. Together, the Union and Enbridge Contract commitments account for almost one-third of the total contracted capacity on NEXUS.[28] As contracted capacity is only 55% of the physical capacity, if Union and Enbridge did not sign the Contracts, only 38% of physical capacity would be subscribed,[29] which would call the project's viability into question.

Some parties argued that some portion of the costs of the Contracts are not eligible for pre-approval because a portion of the Contracts rely upon existing infrastructure, in addition to new NEXUS infrastructure. The OEB disagrees. Under the Contracts, Union would pay one integrated toll for the entire pathway (both new build and existing pipeline) from Kensington to the St. Clair pipeline.[30] Similarly, Enbridge would pay one integrated toll for the entire pathway from Kensington to the Vector pipeline.[31] The threshold for eligibility is whether the Contracts support the development of new natural gas infrastructure. It is not whether the Contracts relate only to new infrastructure. The NEXUS Contracts are eligible as they will support the development of 400 kilometres of new pipeline.

5.2 Should the Cost Consequences of the Contracts be Pre-approved under the Guidelines?

Using the Guidelines as a template, the OEB will consider the following factors in its analysis of whether the proposed NEXUS contracts are reasonable:

1. Need, Costs and Benefits of the project
2. Contract Diversity
3. Risk Assessment
4. Other Considerations
    a. Affiliate Relationships
    b. Retail Competition Impacts

[28] EB-2015-0166 / EB-2015-0175, Union Reply Argument Summary, December 2, 2015 at p. 16.
[29] *Ibid.*
[30] EB-2015-0166 / EB-2015-0175, Union Pre-Filed Evidence, Exhibit A at p. 43.
[31] EB-2015-0166 / EB-2015-0175, Enbridge Pre-Filed Evidence, Exhibit A / Tab 3 / Schedule 1 at p. 17.

5.2.1 Need, Costs and Benefits of the Project

The Guidelines indicate applications for the pre-approval must include evidence regarding the need, costs and benefits of the proposed project and a landed cost analysis comparing the proposed project to alternatives.[32] The costs are known and defined in the Contracts. The benefits are not known and must be forecasted.

Union and Enbridge provided analysis which outlined the benefits of the Contracts, including: improvements to supply and transportation diversity, supply security, reliability, enhanced liquidity at Dawn, and the ability to access a competitively priced (Enbridge) or a less expensive (Union) source of supply. A number of parties agreed.

Other parties argued that the benefits cited by Union and Enbridge could be achieved without the NEXUS pipeline and without committing to long-term transportation contracts. The parties submitted that the same benefits could be achieved at a lower risk to ratepayers, by purchasing delivered supplies at Dawn or through Niagara, for example.

Findings

The OEB finds that substantial benefits will accrue to Union’s and Enbridge’s customers through the proposed long-term Contracts for transportation capacity on the NEXUS pipeline. To prove the need for the NEXUS project, it is not necessary to convince the OEB that there are no alternatives to the project. It is sufficient for the OEB to assess the benefits that will accrue to customers against the costs to customers. The Guidelines do not prescribe a specific test, yet some intervenors submitted that the benefits must be proven to exceed the costs.

The difficulty in comparing costs, which are defined, to benefits, which are forecast and assumed, is that the future is unknown. The quantification of benefits is subject to its own forecast risk as no one knows what the future holds with or without the NEXUS pipeline.

The OEB is of the view that establishing a direct transportation link between Ontario and the Appalachian basin is an important opportunity for Ontario’s natural gas market. It is the key, differentiating benefit of the Contracts, compared to the alternatives proposed. As noted by Sussex Economic Advisors, an expert retained jointly by Union and

[32] Guidelines at p. 4 (Part II).

Enbridge, the Appalachian basin is the fastest growing natural gas supply basin in North America.[33]

The OEB agrees with Union and Enbridge that procuring supply directly in the Appalachian region results in benefits that could not be achieved through the purchase of delivered natural gas supplies at a market hub. These benefits include access to pricing signals, and pricing indices available in the Appalachian region that the utilities would not be able to access directly without the Contracts. The OEB finds that this new, direct access enhances diversity of supply. In situations where gas prices are increasing at one location, the ability to access gas supply at another location provides alternatives that can reduce price volatility. In addition, the evidence indicates that at times of peak demand, a lack of transportation capacity can be the primary constraint driving cost increases for the utilities.[34]

For Union, the Appalachian supplies flowing on NEXUS will replace some of its Western Canadian supplies.[35] The increase in diversity is most pronounced in Union's northern service area, which is currently 100% reliant on Western Canadian gas,[36] although diversity will also be improved in Union's southern service area. In the case of Enbridge, the Appalachian supplies flowing on NEXUS will replace some of the gas currently sourced at Chicago,[37] which will enhance the diversity of Enbridge's supply portfolio. The OEB finds that transportation diversity will be enhanced for both Union and Enbridge by the addition of a new, direct route for Appalachian basin gas to reach Dawn.

Union and Enbridge each conducted a landed cost analysis comparing the Contracts to various alternatives. The utilities used different methodologies and assumptions, which resulted in different outcomes. For instance, Union's analysis indicated that the Contracts would be cheaper than buying gas at Dawn, whereas Enbridge's analysis indicated that the Contracts would be about 10% more expensive than the Dawn option.[38] The OEB recognizes that there is always a level of uncertainty with long-term

---

[33] Sussex Economic Advisors, Union Gas Limited and Enbridge Gas Distribution Inc., NEXUS Gas Transmission – Market Study, May 2015 at p. 21.
[34] EB-2015-0166 / EB-2015-0175, Oral Hearing Transcripts, Volume 2, November 15, 2015 at p. 128.
[35] EB-2015-0166 / EB-2015-0175, Union Pre-Filed Evidence, Exhibit A at pp. 10-11.
[36] *Ibid.* at p. 29.
[37] EB-2015-0166 / EB-2015-0175, Enbridge Pre-Filed Evidence, Exhibit A / Tab 3 / Schedule 1 at p. 28.
[38] EB-2015-0166 / EB-2015-0175, Union Interrogatory Responses, Exhibit B .T1.Union.TCPL.2 at Attachment 1; EB-2015-0166 / EB-2015-0175, Enbridge Interrogatory Responses, Exhibit I.T1.Enbridge.TCPL.3 at p. 2; EB-2015-0166 / EB-2015-0175, Oral Hearing Transcripts, Volume 2, November 16, 2015 at pp. 132-133.

price forecasts yet is satisfied that, taken together, the two landed cost analyses support the applicants' contention that the Contracts are cost-competitive.

Various alternatives to the NEXUS pipeline were discussed over the course of the proceeding. One alternative was the proposed Rover pipeline announced in June 2014. Rover follows a similar path as NEXUS and has a similar toll.[39] The announcement of the Rover pipeline was made after Union and Enbridge had entered discussions for capacity on NEXUS. Rover is supported by a number of natural gas suppliers that have subscribed for capacity to bring natural gas to Dawn[40] and an application related to the project is currently before the US Federal Energy Regulatory Commission.[41] If the Rover project is built, it would provide a direct connection between Ontario and the Appalachian region. At this time, however, it is not certain that Rover will proceed. Even if it is built, the evidence indicates that there is no available capacity for Union and Enbridge, as the project is already fully subscribed.[42] For these reasons, the prospect of Rover being built does not preclude the OEB from pre-approving the Contracts.

Another alternative to NEXUS raised was the transportation of Appalachian gas to Ontario through Niagara. Enbridge, beginning in 2016, will flow a significant quantity of gas (200,000 GJ/d) through Niagara.[43] The OEB finds that Enbridge's NEXUS contract provides an appropriate balance to its capacity through Niagara and sufficiently diversifies its natural gas supply portfolio in terms of supply sources and transportation paths. Union has a contract for about 21,000 GJ/d of capacity through Niagara.[44] Some intervenors suggested that Union should have participated in previous open seasons for additional capacity through Niagara. The OEB does not find flowing gas through Niagara to be a comparable alternative to the Contracts which provide direct access at the gas supply source through NEXUS. In addition, the OEB does not find Niagara to be a viable alternative as the evidence indicates that capacity at Niagara is not available in sufficient quantities to meet Union's needs.[45]

In summary, the OEB finds that the quantitative and qualitative benefits arising from the Contracts justify the cost consequences.

[39] EB-2015-0166 / EB-2015-0175, Union Pre-Filed Evidence, Exhibit A at p. 24.
[40] EB-2015-0166 / EB-2015-0175, Oral Hearing Transcripts, Volume 1, November 13, 2015 at pp. 35-36.
[41] *Ibid.* at p. 26.
[42] *Ibid.* at p. 38.
[43] EB-2015-0166 / EB-2015-0175, Oral Hearing Transcripts, Volume 2, November 16, 2015 at pp. 131-132, 141.
[44] EB-2015-0166 / EB-2015-0175, Union Interrogatory Responses, Exhibit B.T3.Union.BOMA.33 at p. 1.
[45] EB-2015-0166 / EB-2015-0175, Exhibit K2.2 and Undertaking J2.2.

5.2.2 Contract Diversity

The Guidelines require applications for pre-approval to include an assessment of how the contract fits into the applicant's overall transportation and natural gas supply portfolio in terms of contract length, volume and services.[46]

Union's precedent agreement is for 150,000 Dth/day of capacity on NEXUS for a 15-year period. This represents approximately 33% of Union's overall natural gas supply portfolio.[47] Enbridge's precedent agreement is for 110,000 Dth/day of capacity on NEXUS for a 15-year period. This represents approximately 15% of Enbridge's annual system gas requirements.[48]

Union and Enbridge argued that the NEXUS Contracts fit well within their gas supply portfolios. A number of intervenors agreed.

Some parties argued that alternative supply arrangements – or, at least in Union's case, a reduction in the contracted capacity on NEXUS – would better fit the applicants' overall transportation and gas supply portfolio.

Findings

The OEB finds that securing transportation capacity on a new pipeline increases contract diversity. In addition to contract diversity for transportation, the OEB finds the Contracts will increase supply diversity. As a result, the proposed Contracts are appropriate additions to the applicants' gas supply portfolios. While the Contracts represent a significant portion of each applicant's overall gas supply portfolio, the OEB does not find that the Contracts represent an overreliance on a single contract.

5.2.3 Risk Assessment

The Guidelines require applications for pre-approval to include a description of all the risks associated with a project and the applicant's plans for minimizing the identified risks.[49]

Union and Enbridge identified risks and provided risk mitigation strategies as part of their respective applications.

---

[46] Guidelines at p. 5 (Part III).
[47] EB-2015-0166 / EB-2015-0175, Union Argument-in-Chief, November 18, 2015 at p. 8.
[48] EB-2015-0166 / EB-2015-0175, Enbridge Argument-in-Chief, November 18, 2015 at p. 1.
[49] Guidelines at p. 5 (Part IV).

The applicants stated that there are construction and operational risks directly associated with the NEXUS project itself, largely in terms of potential changes to the capital costs and project delays. The applicants stated that they have mitigated these risks through the inclusion of a capital cost adjustment mechanism and other protections in their precedent agreements.

There are also forecasting risks associated with the Contracts. The applicants stated that they have adequate flexibility in the remainder of their supply and transportation portfolios to ensure that if there is a reduction in demand for gas relative to their forecasts they will not be left with unused excess capacity on the NEXUS pipelines.

The applicants also discussed risks, and risk mitigation strategies, associated with supply forecasting and regulatory changes.

A number of parties supported Union and Enbridge and submitted that the risks have been adequately addressed. In addition, these parties assert that the benefits of the long-term Contracts outweigh the costs, including the associated risks.

Some parties opposed pre-approval on the basis that it shifts risks that should properly be the responsibility of the applicants' shareholders to the customer. These parties argued that if the utilities believe that the Contracts are prudent they should sign the Contracts even in the absence of pre-approval. Other parties argued that there is uncertainty regarding pricing and demand in the natural gas market and committing to substantial transportation capacity for a 15-year period is not a reasonable course of action at this time.

Findings

There are two main types of risk associated with the proposed Contracts: (a) construction risks and (b) customer financial risks.

The construction risks are related to potential capital cost overruns and project delays or cancellation. The OEB finds that the construction risks have been adequately mitigated through the precedent agreements.

In particular, the precedent agreements include a capital cost tracker, which will cap the applicants' exposure to any cost overruns that may occur. The same mechanism enables the applicants to pay a lower toll if the project comes in under budget.[50] The

[50] EB-2015-0166 / EB-2015-0175, Union Pre-Filed Evidence, Exhibit A at pp. 46-47; and EB-2015-0166 / EB-2015-0175, Enbridge Pre-Filed Evidence, Exhibit A / Tab 3 / Schedule 1 at p. 40.

precedent agreements also allow the applicants to withdraw in the event of a major delay or cancellation, without penalty or liability.[51]

The customer financial risks relate to the changes that could occur in the natural gas market over the term of the Contracts. There could be a reduction in gas demand as compared to forecast, which would reduce the need for capacity on the NEXUS pipeline. Lower cost supply and transportation options could become available; these opportunities could be lost to system gas customers due to the Contracts held by the applicants for NEXUS capacity.

With respect to demand forecasting risks, the OEB finds that the applicants' gas supply portfolios include a significant component that is not committed, which can be used to address reductions in natural gas demand. In addition, the utilities could opt not to renew short-term contracts. The OEB finds, based on the evidence, that there is little risk that any portion of the costs associated with the Contracts will become stranded due to reductions in gas demand over the 15-year term, thereby creating financial risk to customers.

Similarly, even if lower priced gas supply and transportation options became available at some point in the 15-year term, the applicants will have enough flexibility in their overall gas supply portfolios to take advantage of those opportunities.

In summary, the OEB finds that the construction risks associated with the NEXUS have been sufficiently mitigated by the applicants through their precedent agreements. The OEB also finds that the flexibility that exists in the applicants' gas supply and transportation portfolios will mitigate the ratepayer financial risks. This flexibility would allow the applicants to access future opportunities for lower cost gas supplies (if they become available) and would protect ratepayers from potential stranded costs associated with any potential decline in the demand for gas.

Overall, the OEB is satisfied that the benefits of the proposed NEXUS Contracts, as discussed in section 5.2.1, outweigh the financial costs of the Contracts and the associated risks discussed above.

The OEB also notes that the applicants and some intervenors are correct to point out that, just as there are risks associated with pre-approving the cost consequences of the Contracts, there are risks associated with not approving them. The Guidelines do not reference opportunity costs within the Risk Assessment section. The opportunity cost is

[51] EB-2015-0166 / EB-2015-0175, Union Pre-Filed Evidence, Exhibit A at p. 47; and EB-2015-0166 / EB-2015-0175, Enbridge Pre-Filed Evidence, Exhibit A / Tab 3 / Schedule 1 at pp. 40-41.

the cost to replace the direct transportation link resulting from the Contracts. The Ontario market could be deprived of the opportunity to be directly connected to the Appalachian basin with the corresponding benefits previously described.

5.2.4 Other Considerations

The Guidelines require applications for pre-approval to include a description of the relationship between the parties to the contract and the applicant's parent company and/or affiliates. Applications must also include an assessment of the retail competition impacts and impacts on existing transportation pipeline facilities.[52]

Union acknowledged that its corporate parent, Spectra Energy Corporation, has an interest in the NEXUS project. Spectra Energy Corporation owns both Union and Spectra Energy Transmission, LLC, one of the co-developers of NEXUS.[53] One party expressed concern that Union's Contract therefore was non-compliant with the OEB's Affiliate Relationship Code (ARC). However, the evidence indicated that none of the Spectra entities has a controlling interest in the NEXUS project; rather, the project is a 50-50 joint venture with the DTE Energy Company.[54] As a result, Union and NEXUS Gas Transmission, LLC are not affiliates within the meaning of the ARC. In any case, Union has indicated that it would comply with the spirit of the ARC, for example, by paying a negotiated rate that is comparable to what other shippers pay for NEXUS transportation capacity.[55]

Enbridge has no affiliate relationship issues related to the NEXUS project.

With respect to impacts on retail competition and on existing transportation pipeline facilities, the applicants provided some evidence on these issues in accordance with the Guidelines. Enbridge stated that NEXUS will have a positive impact on retail competition as utilities and marketers alike will benefit from additional supply options at the Dawn hub. Enbridge also stated that there is no expectation that NEXUS will result in any significant impacts on existing pipeline facilities that could affect Ontario consumers.[56] Union specifically discussed the risks of NEXUS to the TransCanada Mainline and stated that the impact of the applicants not renewing long-haul

[52] Guidelines at p. 5 (Part V).
[53] EB-2015-0166 / EB-2015-0175, Oral Hearing Transcripts, Volume 1, November 13, 2015 at p. 65.
[54] *Supra* note 2; EB-2015-0166 / EB-2015-0175, Union Pre-Filed Evidence, Exhibit A at p. 45; EB-2015-0166 / EB-2015-0175, Union Reply Argument Summary, December 2, 2015 at p. 22.
[55] EB-2015-0166 / EB-2015-0175, Union Reply Argument Summary, December 2, 2015 at pp. 22-23.
[56] EB-2015-0166 / EB-2015-0175, Enbridge Pre-Filed Evidence, Exhibit A / Tab 3 / Schedule 1 at pp. 42-43.

transportation was already contemplated and addressed in the Mainline Settlement Agreement.[57] No other parties raised any concerns on this issue.

Findings

The OEB finds that Union's commitment to comply with the spirit of the ARC even though not technically an affiliate of NEXUS Gas Transmission, LLC is a reasonable approach to any issues that might arise as a result of Union's parent's interest in NEXUS.

The OEB has no concerns with the impact that the NEXUS pipeline will have on retail competition or existing pipeline facilities.

[57] EB-2015-0166 / EB-2015-0175, Union Pre-Filed Evidence, Exhibit A at p. 52.

6 COST AWARDS

The OEB may grant cost awards to eligible parties pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. When determining the amount of the cost awards, the OEB will apply the principles set out in section 5 of the OEB's *Practice Direction on Cost Awards*. The maximum hourly rates set out in the OEB's Cost Awards Tariff will also be applied. The OEB notes that filings related to cost awards shall be made in accordance with the schedule set out below.

7 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Union and Enbridge are granted pre-approval for the cost consequences of their respective long-term transportation contracts for capacity on the NEXUS pipeline.

2. Intervenors shall file with the OEB, and forward to Union and Enbridge, their respective cost claims by **January 7, 2015**.

3. Union and Enbridge shall file with the OEB, and forward to intervenors, any objections to the claimed costs by **January 21, 2015**.

4. Intervenors shall file with the OEB, and forward to Union and Enbridge, any responses to any objections for cost claims by **January 28, 2015**.

5. Union and Enbridge shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto December 17, 2015

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary